No. 93-369

SUPREME COURT, U.S.
AUG 16 1993
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In The

Supreme Court of the United States

October Term, 1993

FRED WILLIAMS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Is a medical student who received scholarship funds pursuant to 42 U.S.C. § 254(l), for the first three years of his medical school education, but who did not accept scholarship funds for his final year of medical school, liable to the government for more than the amounts which have been paid to him, including interest, pursuant to 42 U.S.C. § 254o(a)(1)(D)?

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Table of Authorities	iii
Official and Unofficial Reports of Opinions	1
Jurisdiction Statement	2
Statutes and Regulations	3
Statement of the Case	4
Reasons for Granting the Writ of Certiorari	9
Conclusion	24
Appendices	A

TABLE OF AUTHORITIES

Citations	Page
Boungiorno v. Sullivan, 912 F.2d 504 (D.C. Cir. 1990) . . .	12
Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982)	19
Rendlemann v. Bowen, 860 F.2d 1537 (9th Cir. 1988) . . .	12
Toibb v. Radloff, 501 U.S. ____, 111 S.Ct. 2197, 115 L.Ed.2d 145 (1991)	20
Union Bank v. Wolas, ____ U.S. ____, 112 S.Ct. 527, 116 L.Ed.2d 514 (1991)	19
United States v. Bills, 822 F.2d 373 (3d Cir. 1987) . .	10, 24
U.S. v. Citrin, 972 F.2d 1044 (9th Cir. 1992) . . .	11
U.S. v. Conway, 686 F.Supp. 571 (E.D. La. 1988), judgment affirmed, 868 F.2d 1269 (5th Cir. 1989)	12
U.S. v. Cooper, 699 F.Supp. 69 (W.D. Pa. 1988) . .	12
U.S. v. Duffy, 879 F.2d 192 (6th Cir. 1989) . . .	12

U.S. v. Hayes,
633 F.Supp. 1183 (N.D.N.C. 1986) . 12

U.S. v. Melendez,
944 F.2d 216 (5th Cir. 1991) . . . 12

U.S. v. RonPar Enterprises, Inc.,
489 U.S. 235, 109 S.Ct. 1026,
103 LawEd.2d 290 (1989) 19

United States v. Swanson,
618 F.Supp. 1231 (E.D. Mich. 1985) 12

United States v. Turner,
660 F.Supp. 1323 (E.D.N.Y 1987) . . 10

United States v. Williams,
994 F.2d 646 (9th Cir. 1993) . . 1, 10
. . . . . 17, 18

AUTHORITIES AND STATUTES

28 U.S.C. § 1254 9

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1291 8

28 U.S.C. § 1331 8

28 U.S.C. §1345 8

42 U.S.C. § 254*l* 3, 10
. . . . . 11, 13,14, 20, 21

42 U.S.C. § 254(1)(f)(1)(B) (iv) . . 22

42 U.S.C. § 254(1-1)(f)(1)(B) (iv) . 22

42 U.S.C. § 254*l*-1 12

42 U.S.C. § 254*l*-1(B)(1)(b)(ii) . . . 14

42 U.S.C. § 254*m* 14, 15
. . . . . 22, 24

42 U.S.C. § 254*m*(b)(3) and (4) . . . 25

42 U.S.C. § 254*m*(c)(1) 24

42 U.S.C. § 254*n* 14, 15

42 U.S.C. § 254*o* 10, 12
. . . . . 15, 22

42 U.S.C. § 254*o*(a) 15, 24

42 U.S.C. § 254*(o)*(a)(1)(D) . . . 10, 16
. . . . . 17, 18, 20, 22

42 U.S.C. § 254*o*(b) 24, 25

42 U.S.C. § 254o(b)(1)(A) 2, 3

42 U.S.C. § 254p(d) 14

42 C.F.R. § 62.10 3

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED BY OTHER COURTS OR ADMINISTRATIVE AGENCIES

The Ninth Circuit Court of Appeals' decision in this case, affirming the District Court's judgment in favor of the government, is entitled *U.S. v. Williams*, No. 92-15042, and is reported at 994 F.2d 646 (9th Cir. 1993).

JURISDICTION STATEMENT

This Court's jurisdiction to review the opinion of the Court of Appeals is founded upon 28 U.S.C. § 1254(1). On May 19, 1993, the U.S. Court of Appeals for the Ninth Circuit filed an opinion affirming a judgment of the U.S. District Court for the District of Arizona. On November 20, 1991, the District Court for the District of Arizona granted the United States' *Motion for Summary Judgment* against Williams on the government's claim for damages pursuant to 42 U.S.C. § 254o(b)(1)(A), in the amount of $166,225.68 plus interest and costs.

STATUTES AND REGULATIONS

Williams received funds from the federal government through a scholarship awarded by the National Health Service Corps Scholarship Program pursuant to 42 U.S.C. § 254*l*. The United States filed a complaint in the U.S. District Court for the District of Arizona to collect damages it alleged Williams owed for breach of his scholarship contract pursuant to 42 U.S.C. 254o(b)(1)(A) § and 42 C.F.R. § 62.10. These provisions are set forth verbatim in Appendix E hereto.

STATEMENT OF THE CASE

Petitioner, Fred Crump Williams, Jr., attended the Baylor College of Medicine ("Baylor"), in Houston, Texas, from July, 1979, until his graduation in June, 1983. Williams' initial interest in the field of medicine was in the field of primary care. As a result, he applied for a scholarship to the National Health Service Corps (NHSC) Scholarship Program for the 1979-80 school year. Williams was awarded an NHSC scholarship and signed the scholarship program contract on May 24, 1979. Williams received a total of $7,283 in 1979-80. On February 13, 1980 and March 27, 1981, Williams signed continuing scholarship agreements with the NHSC for 1980-81 and 1981-82 school years, respectively. Williams received $6,642 in 1980-81 and $8,257 in 1981-82. Williams received a total of $22,182 in scholarship funds

during his three years of participation in the program.

Williams' medical specialty interest changed during his third year of medical school, and he declined scholarship funds for the 1982-83 academic year. Williams did not sign the scholarship "continuation contract" for the 1982-83 school year, sent to him on February 12, 1982. He notified Baylor College of Medicine not to accept funds for this program on his behalf. No funds were transmitted from NHSC to Baylor on Williams' behalf during that school year. Williams paid for his own education in his final year of medical school. He graduated from Baylor in June of 1983 with an intent to specialize in surgery.

Williams continued his post-graduate education, completing his surgery internship in June of 1984, and began his neurosurgery residency at the University of

California at Irvine, in July of 1984. In January of 1985, Williams transferred his neurosurgery residency to the Barrow Neurological Institute in Phoenix, Arizona. He completed his neurosurgery residence there in June, 1989. None of Williams' post-graduate education was financed by the NHSC.

Williams was unable to complete any service related payback program for the NHSC. Williams did enter into a service pay-back agreement with NHSC toward the end of his neurosurgery residency. The sites provided to Williams only allowed for practice in the areas of general surgery, ophthalmology, and orthopedics. Because he was not qualified or trained to practice in these areas, he was not able to match any of the service sites.

Williams entered into a repayment agreement with NHSC in April of 1986, and

paid to a government appointed collection agency the sum of $6,777.00. After payment of that sum, a dispute arose as to how much money Williams owed the government, and Williams ceased making payments. The government subsequently brought this action against Williams to collect not only the amount of the scholarship funds Williams received ($22,182.00), but also to collect treble damages, interest, and penalties totalling $166,255.68. Williams refused to pay this amount, and urged the District Court to deny the government's request for judgment against him for more than the amount of the scholarship funds he actually received, with appropriate interest. The District Court, however, rejected Williams' arguments and entered summary judgment for the government and against him for the full amount the government demanded.

The District Court assumed jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345. The District Court entered an order granting the government summary judgment on or about November 19, 1991. The District Court entered formal judgment in favor of the government and against Williams, in the sum of $166,255.68 on November 20, 1991.

Williams filed a timely *Notice of Appeal* to the Ninth Circuit Court of Appeals, on December 17, 1991. The Ninth Circuit Court of Appeals assumed jurisdiction to hear and determine Williams' appeal pursuant to 28 U.S.C. § 1291. On May 19, 1993, the Ninth Circuit Court of Appeals issued an opinion affirming the judgment of the District Court in favor of the government and against Williams for the amount of $166,255.68 plus post-judgment interest and

costs. Williams seeks review by this Court of the Ninth Circuit Court of Appeals' decision, pursuant to 28 U.S.C. § 1254.

REASONS FOR GRANTING

THE WRIT OF CERTIORARI

A. IN A CASE OF FIRST IMPRESSION, THE NINTH CIRCUIT COURT OF APPEALS ERRED IN ITS INTERPRETATION OF A FEDERAL STATUTE.

The Ninth Circuit Court of Appeals, in its opinion, stated:

> "This is the first case to present a subsection (a)(1)(D) fact pattern.[1] Neither the government's cited cases, *United States v. Bills*, 822 F.2d 373 (3d Cir. 1987) and *United States v. Turner*, 660 F.Supp. 1323 (E.D.N.Y. 1987), is on point because the defendants in both cases continued to receive scholarship funds through graduation, and neither defendant refused receipt of scholarship funds, in whole or in part. Therefore, this case presents a statutory interpretation question of first impression." 994 F.2d at 648.

Interpretation of 42 U.S.C. § 2541, et. seq., will reoccur. Numerous doctors, nurses, veterinarians and pharmacists have

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[1] 42 U.S.C. § 254(o)(a)(1)(D).

been educated through the use of NHSC scholarship funds. Many of these medical providers, due to personal circumstances or change in their educational interests, will cease receiving scholarship funds in whole or in part, prior to graduation. The government will now continue to pursue these students and demand they pay treble the amounts they received pursuant to their scholarships despite the clear meaning of the statute in scrutiny. As a result, numerous future medical providers will be affected by this Court's interpretation of this federal legislation.[2]

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[2] There have already been numerous reported decisions of the federal circuit courts and district courts interpreting 42 U.S.C. § 254(l), et seq. These courts have been asked to determine whether a doctor was excused from his service obligation because the Department of Health and Human Services changed its deferment policy. *U.S. v. Citrin*, 972 F.2d 1044 (9th Cir. 1992); whether the Secretary of Health and Human Services failed to waive or suspend any or all of the service of payment obligations of participant based upon undue hardship.

The Ninth Circuit's decision was predicated on its interpretation of 42 U.S.C. § 254o entitled "Breach of

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Boungiorno v. Sullivan, 912 F.2d 504 (D.C. Cir. 1990); whether requiring a physician to exercise the private practice option to satisfy the service requirement in a listed service area is an appropriate means by which the Secretary can ensure the purposes of the program are advanced. *U.S. v. Duffy*, 879 F.2d 192 (6th Cir. 1989); whether a particular service obligation poses an undue hardship and is against equity in good conscience. *U.S. v. Melendez*, 944 F.2d 216 (5th Cir. 1991); whether the Secretary gave a physician an opportunity to participate in the placement program and whether the Secretary complied with the statutory duty and administrative obligations under the program. *Rendlemann v. Bowen*, 860 F.2d 1537 (9th Cir. 1988); whether a physician's failure to report to a hospital to which he had been assigned or to seek timely deferment of the service obligation, after completing medical education under the program, entitled the government to three times the amount of her scholarship, plus interest. *U.S. v. Conway*, 686 F.Supp. 571 (E.D. La. 1988) 868 F.2d 1269 (5th Cir. 1989); whether the liquidated damage provision contained in the scholarship application providing for treble damages plus interest is valid and enforceable and did not constitute a penalty. *U.S. v. Hayes*, 633 F.Supp. 1183 (N.D.N.C. 1986); see also *U.S. v. Cooper*, 699 F.Supp. 69 (W.D. Pa. 1988); and *United States v. Swanson*, 618 F.Supp. 1231 (E.D. Mich. 1985).

Scholarship Contract or Loan Repayment Contract". That statute provides, in pertinent part:

> "(a)(1) An individual who has entered into a written contract with the Secretary under section 338A [42 USCS § 254 *l*] and who —
>
> (A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),
>
> (B) is dismissed from such educational institution for disciplinary reasons,
>
> (C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training, or
>
> (D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.
>
> (2) An individual who has entered into a written contract with the Secretary under section 338B [42 USCS § 254*l*-1] and who —
>
> (A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level

determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under section 338B(b)(1)(B)(ii) [42 U.S.C. § 254*l*-1(b)(1)(B)(ii), in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.

(b)(1)(A) Except as provided in paragraph (2), if an individual breaches his written contract by failing (for any reason not specified in subsection (a) or section 338F(d) [42 U.S.C. § 254p(d)] either to begin such individual's service obligation under section 338A [42 U.S.C. § 254*l*] in accordance with § 338C or 338D [42 U.S.C. §§ 254m or 254n] or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A = 3\varnothing\left(\frac{t-s}{t}\right)$$

in which "A" is the amount the United States is entitled to recover, " " is the sum of the amounts paid under the subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans

> bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the individual's period of obligated service; and "s" is the number of months of such period served by him in accordance with section 338C [42 USCS § 254m] or a written agreement under section 338D [42 USCS § 254n)."

42 U.S.C. § 254o requires treble damages upon breach of an NHSC scholarship contract ONLY if the breach is for a reason not specified in 42 U.S.C. § 254o(a). The statute is clear and unambiguous. Any individual who completes his education under the NHSC scholarship program is obligated to provide service or pay treble damages. However, if an individual, at any time during his education, declines participation in the program and bears the expense of his own education, the individual is not obligated to perform service, but is required to repay monies actually advanced by the government, plus accrued interest.

The fact that Williams received some funds under the NHSC scholarship program does not exclude him from the category of individuals set forth in 42 U.S.C. § 254o(a)(1)(D). That subsection specifically contemplates situations where individuals have received some money under the NHSC scholarship program, but voluntarily discontinue participation in the program. Williams voluntarily discontinued his participation in the program and elected to pay the cost of his fourth year of medical school education. Williams discontinued participating in the NHSC program pursuant to subsection (a)(1)(D), and the plain meaning of the statute compels the result urged by Williams. He is liable for the actual monies received, plus accrued interest, and no more.

Despite the fact Williams fell within the purview of 42 U.S.C. § 254o(a)(1)(D), because he "failed to accept payment or instructed the educational institution in which he was enrolled not to accept payment, in whole or in part, of a scholarship under such contract", when he did not extend his scholarship to include his fourth and final year at Baylor Medical School, the Ninth Circuit Court of Appeals held that Williams should be subjected to treble damages because the Court was not persuaded that subsection (a)(1)(D) has this "plain meaning". 994 F.2d at 649.

The Ninth Circuit panel stated that it was compelled to reach this conclusion for two reasons. First, the Court was not persuaded of the "plain meaning" of the statute. Second, the Court concluded that subsection (a)(1)(D) was meant to treat each year that a recipient received

scholarship funds as a separate and independent contract. As a result, the Court concluded that subsection (a)(1)(D) applies only in situations where a scholarship recipient signs a written contract for a given year and then later, during the course of that year, fails to accept payment or directs his or her school not to accept payment, in whole or in part, for that given year. 994 F.2d 649.

This interpretation of 42 U.S.C. § 254(o)(a)(1)(D), is contrary to the express language of the statute. The Ninth Circuit's interpretation of this statute requires a substitution of statutory language to achieve the judicially desired result reached by this particular Court. The Ninth Circuit's interpretation of this statute is contrary to this Court's consistent decisions regarding the

interpretation and application of Congressional enactments.

In *U.S. v. RonPar Enterprises, Inc.*, 489 U.S. 235, 109 S.Ct. 1026, 103 Law Ed.2d 290 (1989), this Court stated that the plain meaning of legislation should be conclusive, except in the "rare cases [in which] the literal application of the statute will produce a result demonstrably at odds with the intentions of its drafters." Citing *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571, 102 S.Ct. 3245, 3250, 73 L.Ed.2d 973 (1982). In such cases, the Court stated the intention of the drafters, rather than the strict language, controls. *Ibid.* 109 S.Ct. at 1031. In *Union Bank v. Wolas*, ____ U.S. ____, 112 S.Ct. 527, 116 L.Ed.2d 514 (1991), this Court stated that the fact that Congress may not have foreseen all of the consequences of a statutory enactment

is not a sufficient reason for refusing to give effect to its plain meaning. Citing *Toibb v. Radloff*, 501 U.S. ____, 111 S.Ct. 2197, 115 L.Ed.2d 145 (1991).

The Ninth Circuit concluded that the term "scholarship" refers to a single, one-year unit corresponding to a given school year. Citing 42 U.S.C. § 254*l*(f)(1)(B)(iv). That interpretation of this legislation is not consistent with the plain meaning of the statute.

42 U.S.C. § 254(o)(a)(1)(D) states that if an individual has entered into a contract with the secretary under § 254*l* of this title, and he fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under his contract, [then] in lieu of any service obligation arising under his contract, the participant is liable to the United States

for the amount which has been paid to him, or on his behalf, under the contract. The plain meaning of this statute is that if a participant enters into a written contract, but fails to accept a payment for any scholarship year, pursuant to his contract, then in lieu of service, he is liable to the federal government only for those amounts which have been paid to him or on his behalf, under the contract - not just for a particular scholarship year.

The statute in question states that a participant who has signed a contract under § 2541, and who fails to accept payment or instructs the institution not to accept payment under the contract, is liable to the government only for the amounts which he has been paid under the contract. In other words, termination of the scholarship funds prior to the participant's completion of his medical education only gives rise to

a requirement that the participant repay the amounts advanced by the government under the contract. This interpretation of 42 U.S.C. § 254o(a)(1)(D) is consistent with the statutory scheme which does not impose treble damages upon those who do not complete medical school because of academic, disciplinary, or voluntary termination of their medical school education. The Ninth Circuit decision is directly contrary to the express language of the statute.

The Ninth Circuit's interpretation of 42 U.S.C. § 254(o) is also contrary to 42 U.S.C. § 254m. This statute provides, in pertinent part:

> "(b)(1) If an individual is required under subsection (a) of this section to provide service specified in § 254(l)(f)(1)(B)(iv) or § 254(l-1)(f)(1)(B)(iv) of this title (hereinafter in this subsection referred to as "obligated service"), the secretary shall, not later than ninety days before the date described in paragraph (5), determine if the individual shall provide such service -

(A) As a member of the corps who is a commissioned officer in the regular or reserve corps of the service, or who is a civilian employee of the United States, or
(B) As a member of the corps who is not such an officer or employee, and shall notify such individual of such determination.

* * *

(5)(A) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathic medicine, dentistry, veterinarian medicine, optometry, podiatry, or pharmacy, the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the training required for such degree, ...

* * *

(c) An individual shall be considered to have begun serving a period of obligated service -

(1) on the date such individual is appointed as an officer in a Regular or Reserve Corps of the Service or is designated as a member of the Corps under subsection (b)(3) or (b)(4) of this section, or

(2) In the case of an individual who has entered into an agreement with the secretary under § 254*n* of this title on the date specified in such agreement,

whichever is earlier."

A participant's liability arising from a breach of the scholarship contract hinges upon whether the breach occurs before or after appointment to the corps. See, concurring and dissenting opinion of Circuit Judge Becker, in *U.S. v. Bills*, 822 F.2d 373, 380 (3d Cir. 1987). Subsection (a) of § 254o deals with breaches occurring prior to the participant's appointment to the National Health Service Corps, as a result of such matters as failure to maintain academic standing, dismissal from institution, or voluntary termination or failure to accept payment.

In contrast, subsection (b) of § 254(o) deals with breaches that occur as a result of an individual's failure to "begin ... or to complete [his/her] service obligation." Because 42 U.S.C. § 254(m)(c)(1) provides that the service obligation begins on the date an individual

is appointed to the corps. Subsection (b) of § 254(o) obviously deals with breach of the scholarship agreement after appointment. Damages for this type of breach are trebled.

In this case, Williams received three years of scholarship funds, but failed to complete his medical school education under the scholarship program. Because Williams did not utilize scholarship funds to complete his medical school education, he did not become obligated to provide service to the federal government pursuant to 42 U.S.C. § 254(m). That statute specifically states that Williams' service obligation did not arise until he was appointed to the corps.[3] Williams was never appointed to the corps. As a result, he never incurred a service obligation pursuant to law. The Ninth Circuit ignored these express

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[3] See 42 U.S.C. § 254*m*(b)(3) and (4).

statutory provisions, apparently because they did not like the result which Congress had directed by statute. Clearly, Congress has the right to amend the statute if a different result is desired. The judiciary does not have the right to amend the statute. The Ninth Circuit constructed an interpretation of this statute despite the express language of this Congressional enactment. The Ninth Circuit's interpretation of this statutory scheme is forbidden by this Court's clear mandates with regard to statutory construction and their decision should be reversed by this Court.

CONCLUSION

The Ninth Circuit's decision in this case is contrary to the express provisions of Congressional legislation. The 9th Circuit ignored the plain meaning of the statutory language and instead attempted to craft a decision it claimed was consistent with the legislative intent. The 9th Circuit's decision is contrary to this Court's dictates regarding statutory construction. Because this is a case of first impression, and because the 9th Circuit has failed to apply the "plain meaning" of the legislation at issue, this Court should grant Williams this Petition for Writ of Certiorari.

Respectfully submitted this 27th day of August, 1993.

MESCH, CLARK & ROTHSCHILD, P.C.

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